IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 591 OF 2005

Dagadu Vithoba Tupe & ors. ... Appellants

V/s

Prakash Chandru Tupe & ors. ... Respondents

Mr. Milind Deshmukh for the appellants.

CORAM: P.V. KAKADE, J.

DATED: 4TH AUGUST, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Sangli, dated 28.7.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Vita, dated 29.1.2000 dismissing the suit for partition filed by the plaintiffs.

2. Heard the learned counsel for the appellants. Perused the record.

3. The plaintiffs filed the suit for partition and consequential reliefs including the possession of their

respective shares.

Defendants contested the suit on the ground that the partitions were already effected, hence the suit was sought to be dismissed.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the defendant No.2 had proved that the properties were already partitioned at the time of plaintiffs' grandfather and since then they are separated from joint family properties and hence the plaintiffs' suit for partition was not maintainable.

5. The appeal was carried to the District Court. The learned Addl. District Judge heard the appeal on merits and came to the conclusion that the findings of the Trial Court were legal and correct and dismissed the appeal.

6. At the outset, it must be noted there is no substantial question of law involved in this appeal. The only question which was involved in the dispute was whether the suit property was liable to be partitioned or not. The defendants came with the specific case that

there were already partitions of the property at the time of grandfather of the plaintiffs and, therefore, there is no question of effecting the partition of the suit property as the property is exclusively owned by them. In support of this version, the defendants have led ample evidence which is discussed by both the Courts below in order to come to the conclusion that the partitions were already effected. It was submitted on behalf of the appellants that the father of the present appellant was mentally retarded and, therefore, was not in a position to assert his right for partition. However, the evidence of Laxmibai, widow of Vithoba shows in categorical terms that, it is an admitted position that the partitions were already effected long ago and, therefore, there is absolutely no doubt about this aspect. Be that as it may, the fact remains that there is no substantial question of law and, as such, the appeal deserves to be dismissed.

7. In the result, the appeal stands dismissed with no order as to costs.

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